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identification, and providing for the appointment of a director of said bureau, defining his duties and qualifications and powers; providing for the appointment of a clerk of said bureau and fixing his qualifications; fixing compensation of said director and clerk, providing for the manner of paying the same and providing for the expense of conducting the office"; approved March 20, 1905, is hereby repealed and all other acts and parts of acts in conflict herewith are hereby repealed.]

The Voluntary Defenders Committee.—To provide counsel for needy defendants in criminal cases in New York.

1. Purpose.—To employ a staff of attorneys and investigators who will offer their services to the criminal courts in cases where the law provides for the assignment of counsel to the defendant; who will undertake the voluntary defense of needy and deserving persons accused of crime; and who will assist others engaged in like efforts.

2. The Field.—In theory the law provides for the defense of every man accused of crime. If, when he comes up to plead to an indictment, he has no lawyer and desires one, the court is required to assign counsel to defend him—without pay, except in cases where the charge is murder in the first degree. If he pleads guilty, a probation officer is delegated to ascertain facts which will assist the court in determining the proper punishment. So far as the statutes are concerned, the poor man and the rich are equal in the eyes of the law.

In practice, the theory does not work out. The law can provide for the assignment of counsel, but can not provide counsel to be assigned. The probation officer may do his best; but he is an investigator, not an advocate. The prisoner, having admitted his guilt, overawed perhaps and disheartened, as often as not foreign born and speaking no English, can seldom adequately present his own cause to an officer of the law. He needs some one to urge it for him. In the daily grind of cases through the criminal courts, it is seldom that the poor man gets a thoroughgoing defense.

3. Why the Courts Find it Hard to Assign Competent Counsel.—Most lawyers in civil practice have neither the experience nor the equipment to handle properly a criminal case. There is required both knowledge of the types of human nature involved and judgment as what the criminal courts and juries will do; as to whether, for example, it is best to defend, to plead guilty and trust to mercy, or to go to the district attorney, present the defendant's case and ask for his discharge. The essential facts, both as to the crime charged and the life and surroundings of the man accused, have to be dug out with great difficulty;—often from most unpleasant soil. This requires trained investigators who "know the town" and the "underworld." Few lawyers have such assistants at their command; few are willing or able themselves to rummage the unpleasant places for facts and witnesses. Not only because he is very loath to undertake the task, but because he cannot properly cope with it, the civil lawyer is practically exempt from such assignment.

Practitioners at the criminal bar of the type that a court likes to trust are unfortunately few in proportion to the number of cases to be assigned. In 1915, in New York County, counsel were assigned to 1,495 persons charged with felony. The defense of a criminal is a laborious and expensive task. Naturally the courts hesitate to impose too much voluntary service on the few

available men; and naturally they in turn are reluctant to accept more than a few assignments.

The average person has scant idea of the responsibility involved or of the cost, in money, time and toil, of adequately representing a defendant in a criminal proceeding. Often the very soul of a man is at stake. He may, by conscientious and painstaking effort, be saved not only from jail but from himself and for society. He may, because of his lawyer's carelessness or lack of resources, ability, vision or conscience, be turned into a criminal for life.

4. What Actually Happens.—A small group of a dozen or so lawyers make a profession of handling assigned cases. They sit each morning in a conspicuous place in Part I of the Court of General Sessions where assignments are made. Usually it is only some member of this volunteer band who is available to a perplexed judge when he must assign counsel.

For the most part, these lawyers do their work "according to their lights." Occasionally there develops among them a "shyster," who makes use of his assignment to extract cash from relatives or friends of the accused by means of dire tales of what will happen if money is not forthcoming to buy off witnesses, corrupt high personages, or what not. The judges, however, are on the alert to stop such practices and it is doubtful if the darker stories as to the evils of assigned counsel are true except in rare instances.

A real evil, nevertheless, is involved in a system which makes it necessary to assign cases to a man of this type. As a rule he has no facilities to do the work. He has no assistants or investigators, sometimes not even an office. He haunts the criminal courts by day, and at night plods around in the weary task of seeking witnesses. He has no easy time picking up enough pay cases to eke out a living. The temptation to try to get some money for his supposedly gratuitous services out of the defendant or his family or friends is enormous. A stimulus to do good work of course exists in the possibility that the news that he has been able to get a man off may spread and bring him a paying client. In a hard case, however, where the prospects of acquittal are slight, and the defendant is friendless, it is only too easy to shirk the work, to urge the defendant to plead guilty as a bargain for a light sentence or, if he will not, to give him only a perfunctory defense.

The whole situation was once graphically summarized by one of these practitioners in a frank appeal to the jury. "This man," he urged, "has no lawyer. I am only assigned counsel. I get no pay. My only reward is in heaven and how can I ever get there!"

To a man who takes assignments only in the hope that by now and then being able to "beat the case" he may fall into something remunerative, the opportunity for real service to the individual and to the community is not even apparent. To that community which is perforce in the city prison, the daily dreary sight of these men, working for nothing only because they are too unsuccessful to work, except infrequently, for something, is not exactly suggestive of high ideals of justice. No wonder the first offender, looking back upon his offense through such an atmosphere, gets a distorted idea of the administration of the criminal law and sees it only as an enemy to be beaten.

What, most of all, a guilty defendant really needs is the advice of a high-minded lawyer. He may well be saved from a life of crime by clear-sighted counsel or plunged into it by sordid and selfish advice. The number of second offenders is increasing with appalling rapidity. In 1906 in New York County,

out of 2,543 convictions under indictments, 648, or 21%, were second offenders. In 1915 out of 3,728 convicted, 1,328, or 35%, were second offenders. Men who have been imprisoned in and spoken from the Tombs have asserted, and there is much to support their views, that second offenders are bred by criminal practitioners whose chief aim in defending a case is to get the defendant off at any price. Of the 3,728 persons convicted after indictment for felony in 1915, 2,737 were between 15 and 30 years of age; over a thousand being between 15 and 20. Certainly every effort should be made to make it possible in all cases of young persons charged with serious crime to assign counsel who can be counted on to strive for something better than merely to "beat the case," whatever the means employed or whatever the guilt of the defendant.

5. How the Poor Man Is Sentenced.—Fully as unsatisfactory are the available means for ascertaining what should be done when a needy defendant pleads guilty upon arraignment. The court may talk with the complaining witness and the officer and then proceed to sentence. The usual practice is to assign a probation officer to investigate. Theoretically, a probation officer is a custodian under whose care a convict may be paroled. Practically, a large part, if not most of the time of the probation officer in general sessions, is taken up in trying to find facts on the basis of which the judge can impose a proper sentence. This confusion of functions makes a real probation system very difficult to operate. About 50% of persons indicted are foreigners, many of them can speak no English. Upon pleading guilty such a man is confined in jail. In any event, he is most likely uncommunicative and fearful in the presence of a court officer. If he had a lawyer who would take up the cudgels for him it would be different. To get back into his life and surroundings, to discount the tales of his enemies, locate the causes of his downfall—this is no easy task and the probation officer, strive as he may, with the number of cases assigned to him, cannot adequately fulfill it. If a convicted youth comes of a family of means, the most skilled lawyer is hired to present all the facts which may show that to release him might save him from a life of crime. Except for what the probation officer may discover, the poor boy, as a rule, comes unbefriended and with no one to speak for him, to his day of judgment.

6. Previous Attempts to Meet the Need.—Various plans have been tried and failed. A well-organized movement a few years ago resulted in presenting to the criminal court judges a list of fine spirited young lawyers who volunteered to take assignments. Most of them took one or two; and never wanted another and were not urged! Individual judges have made brave efforts to draft well-known lawyers, only to give it up, a little later, discouraged. The Legal Aid Society takes such criminal cases as come to it, but its staff is far too busy with handling over 40,000 civil cases a year to take assignments in the criminal courts. The plan which has emerged from experience as most responsive to the need is not easily adaptable to, and runs counter to some of the necessary principles of that society's other work. There has been some agitation for a public defender, but the idea has found little favor for reasons not necessary to elaborate here. The recommendation of the investigating committees of the Lawyers and Bar Associations is to the effect that the need should be met not by the creation of one public office to contest with another, the one representing the state and the other the individual, but by volunteer effort.

7. The Plan of This Committee.—Simply stated, it is to employ, pay and

direct the efforts of counsel who will volunteer to take assignments to defend the accused and to represent before sentence those who have pleaded guilty. They will serve on a salary basis and receive no other compensation and do no other work. They will be equipped with an office, have the services of at least three trained investigators, one of them a woman, who will be selected in part for their ability to speak several of the foreign languages which are encountered. It is planned to make this staff the active center of a large association of volunteer workers. There are many lawyers, both men and women, who are ready to volunteer for work in the criminal courts under the advice and with the assistance of the committee's staff. Several physicians have offered to give their services when called upon. The governor, the district attorney and the judges have become interested in the plan and welcome its opportunities. There will be, when it is carried out, no further need for assigning incompetent lawyers or professional assignment chasers.

8. The Crucial Question—Competent Attorneys.—The success of the whole plan depends on getting the right men as the salaried attorneys. Highly paid and experienced lawyers are engaged as district attorneys to prosecute. To pit against them young, inexperienced or unsuccessful practitioners would be to defeat the undertaking at the very outset. The voluntary defender should be not only a man of the highest character and of fine insight and sympathy; he should know the whole game and be capable of going into a hard-fought trial against the best of assistant district attorneys. Any effort to go at the matter with inadequate resources and cheap or underpaid counsel would be foredoomed to failure.

9. The Answer.—The committee is fortunate in having met its most difficult problem. William Dean Embree, now assistant district attorney in New York County, has expressed his willingness to act as chief attorney. He has served with eminent success and ever-increasing ability and reputation under District Attorneys Jerome, Whitman, Perkins and Swann. No one better fitted, both in character and ability, to undertake the task could be selected. Associated with Mr. Embree will be Timothy Newell Pfeiffer, who was a deputy assistant district attorney under District Attorneys Whitman and Perkins, and who is now the attorney for the American Social Hygiene Association. Both these men are thoroughly imbued with the spirit of the undertaking and see very clearly the opportunities it offers for effective service to the community.

10. The Dangers and Problems to Be Met.—The Scylla of this enterprise is that it may be utilized by unworthy persons as a means of getting highly competent legal services for nothing. The Charybdis is that in many assigned cases the defendant will be a "crook" who wants no honest defense, but only to be kept out of jail by crooked ways. The course between these two dangers will have to be felt out in detail as the work progresses. It can only be roughly charted now.

The chief source of work will be assignments by the court. At the outset it is not planned to take up cases on the application of the person accused. The committee's services, however, will be offered, so far as possible, to other institutions and volunteer workers who are interested in defendants and will vouch for the worthiness of the case.

Of course, in assigned cases, there will be instances where it will prove that the defendant is well able to employ counsel and is not worthy of volun-

tary assistance. The remedy will be to apply to the court to revoke the assignment. This can easily be done in a way that will not prejudice the defendant.

When a voluntary defender finds that he has a guilty man on his hands he will not set out to acquit him. He will boldly face the problem of the defendant's future career. The first essential step towards improvement is a confession of guilt. If the defendant refuses the advice, the voluntary defender may ask to be relieved from the assignment. Usually the defendant will himself be prompt to find means to accomplish such a result. If the assignment must perforce continue, then the voluntary defender has it in his power to insist on legal proof of the defendant's guilt and to keep him and his witnesses from committing perjury on the stand. The really difficult case will be where guilt is apparent but stoutly denied, even to counsel. In such event the answer will have to be sought in the good judgment of the salaried counsel and the officers of the committee as applied to the peculiar circumstances of each case as it arises.

11. How the Plan Is Being Financed.—The problems of putting this work on a successful and useful basis should not be complicated by a constant need for funds. Consequently, before starting, the committee aims to provide to meet its budget for three years. An appeal is being made now to relatively few individuals for assurances of support during that period. When the enterprise has become established it is planned to put it on a permanent basis of a broad general appeal; the work being one which ought to be supported ultimately through a wide public interest rather than by the generosity of a few. The committee will at that time probably resolve itself into some form of association with a large sustaining membership.

12. The Committee.—The committee in charge of the plan has among its members several men who have been assistant district attorneys in New York County and many others who, in one way or another, have had some practical experience with the problems involved. Its membership is as follows:

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|----------------------------------|------------------------|
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| John Kirkland Clark | Stephen H. Philbin |
| George Brokaw Compton | Eustace Seligman |
| Robert J. Eidlitz | Arthur Woods |
| William Dean Embree. | |

The Minnesota Legislature and Child Welfare.—Of the forty-three measures recommended by the Child Welfare Commission thirty-five have been passed by the Legislature with but few unimportant changes.

The joint committee of the House and Senate to which was referred this proposed body of law, recommended for passage all but two bills. As numbered in the printed report these bills are numbers 10 and 37. The substance of bill number ten, relating to the making of a single act of sexual intercourse a felony, was covered by another bill which has passed the Senate, but not, as